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REMARKS

This is responsive to the Office Action dated October 3, 2003 in which claims 1-10 were rejected. However, claims 1-11 were pending prior to the Office Action of October 3, 2003. Therefore, in response to a telephone inquiry to the Examiner from the undersigned attorney, the Examiner, on October 8, 2003, updated the Office Action to address claims 1-11. Therefore, this is responsive to the Office Actions of both October 3, 2003 and October 8, 2003. Moreover, this response is being submitted concurrently with a Request for Continued Examination, a Supplemental Information Disclosure Statement, a petition for a three month extension and the associated fees.

Claims 1-11, all the claims pending in this application, were finally rejected as being unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 4,768,427 issued to Cheng in view of U.S. Patent No. 5,440,973 issued to Welhouse. The rejection alleges that Cheng discloses a cooking pan comprising a base having an upper cooking surface provided with a pattern of concentric corrugations having ridges and groves there between and a non-stick coating applied to the cooking surface. The rejection alleges that Cheng recites that the ridge-to-ridge spacing can be 2 mm or wider. Further, the rejection alleges that Welhouse discloses a distance between a ridge top 15 and grove bottom 17 in the range of 0.005 inches to 0.012 inches and that it would have been obvious to one skilled in the art to modify the ridge top to grove bottom distance of Cheng as taught by Welhouse to improve the heat transfer and drainage performance of the cooking pan.

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Finally, the rejection alleges that the various distance ranges recited in the claims would have been obvious to one skilled in the art to construct the cooking pan with those ranges since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Applicant respectfully traverses these rejections for the following reasons and requests reconsideration in light of the following comments.

Applicant notes that in the final Office Action, the Examiner has basically repeated verbatim the earlier rejections and that whilst detailed arguments against the prior art rejections were presented and, in particular, against the motivation to combine features from the two documents, the comments in the final Office action do not respond to any of Applicant's arguments, commenting in a single sentence that the arguments are "not persuasive."

Applicant will not repeat in full the previous remarks concerning the significance of the invention which is well explained in both the specification and the Amendment of August 18, 2003.

The essence of the matter is as follows. The Applicant's earlier reference Cheng discloses a cookware structure having a cooking surface provided with very tight "closely-spaced" corrugations (see column 1, line 42; column 9, line 53, for example). The specific teaching is that the "suitable maximum pitch spacing is 2 mm" (column 2, line 25). Claim 1 of Cheng is very specific in requiring spacing to be "no more than 2 mm." The peak to valley spacing is "of the order of 1 to 2 mm" (column 3, line 40). Thus, the corrugations are closer together and much deeper than those as now

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claimed. Welhouse teaches a wave-like textured pattern, not 0.13 to 0.18 mm but a suggestion that they might go to 0.3 mm. There is no explicit disclosure of the peak-to-peak spacing in Welhouse but would appear to be very much greater than the present invention, possibly an order of a magnitude greater. If Figure 2 of the Welhouse provides any assistance in this scaling up the dimensions to a typical fry pan, this would suggest a peak-to-peak spacing of the order of 10 to 16 mm.

As Applicant has explained in detail before, the present invention recognizes that by carefully selecting both the pitch spacing and the peak-to-valley spacing as claimed, a cookware article with excellent wear properties and excellent non-stick properties can be achieved.

We reiterate that the Examiner cannot simply choose certain dimensions for a specific surface feature from one prior art reference and other dimensions from another prior art reference relating to a quite different shape of surface feature and combine them at will for the purpose of establishing that the present invention is obvious. There must be some reason for making such a combination absent improper hindsight. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 USPQ 932, 933 (Fed. Cir. 1984). In fact, even if one did make the combinations as the Examiner appears to be suggesting, one would still not arrive at the present invention because neither document is teaching Applicant's claimed pitch spacing in the range of 2.3 to 2.8 mm (which equates to 9 to 11 pitch). Applicant strongly objects to the Examiner's bald and unsupported suggestion that it is routine skill to identify the various distance ranges recited in the claims.


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The reason that the presently claimed invention works is because it has a combination of specific shape and specific dimensions which interact with food and with cleaning utensils in a specific manner. One cannot simply extract dimensions from one particular prior art reference, apply it to another and expect the structure to work in the required manner. It does not. For example, if the pitch spacing of the presently claimed structure was reduced without adjusting other criteria then food builds up in the grooves. If it is increased much beyond the claimed structure, there is significantly increased wear from culinary tools and the like.

Applicant respectfully request a Notice of Allowance with respect to the pending claims at the Examiner's earliest convenience. If the Examiner feels that any matter in this case requires further attention prior to issuing a Notice of Allowance, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved.

Respectfully submitted,

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